

SUBJECT: Zoning text amendment, conditional use permit, and design review for the Shepherd’s Gate cottage addition.

DEPARTMENT: Community Development Department

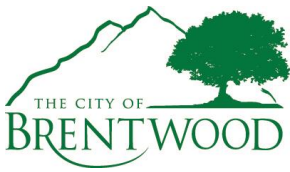
STAFF: Alexis Morris, Director of Community Development
Miguel Contreras, Associate Planner

TITLE/RECOMMENDATION

An application for a Zoning Text Amendment (RZ 23-001) to amend subsection 17.495.005 (“Other Regulations”) and add a new conditionally permitted use to subsection 17.495.003 of the PD-45 zoning district text; a Conditional Use Permit (CUP 23-001) requesting an increase of 15 residents in an existing residential group home; and a Design Review (DR 23-001) requesting approval for a 2,877 square foot addition, consisting of three dwelling units, communal pantry, laundry facility, and associated site improvements to an existing residential group home, on a 1.5-acre parcel located at 605 Sycamore Avenue (APN 016-310-076).

The Planning Commission recommends that the City Council (1) adopt an ordinance approving RZ 23-001, to amend the PD-45 zoning text, specifically subsection 17.495.005 “Other Regulations” to allow, through a Conditional Use Permit, an increase to the number of residents an existing residential group home can accommodate and add a new conditionally permitted use to subsection 17.495.003 that reflects the previously mentioned allowance; (2) adopt a resolution approving CUP 23-001, which requests approval of 15 additional residents to an existing residential group home; and (3) adopt a resolution approving DR 23-001, which requests approval of a 2,877 square foot addition, consisting of three dwelling units (cottages), a communal pantry, laundry facility, and associated site improvements to an existing residential group home.

The proposed project qualifies as a Class 1 categorical exemption under the California Environmental Quality Act (CEQA) Guidelines Section 15301(e)(2), as it will be an addition to an existing facility in which the 2,877 square foot addition will not result in an increase of more than 50 percent of the floor area of the 7,421 square foot existing structure.



The proposed project is further exempt from CEQA as it qualifies as a Class 3 categorical exemption under Guidelines Section 15303(b), as the project consists of the construction of a small multi-family residential structure totaling no more than six dwelling units within an urbanized area.

FISCAL IMPACT

The project proponent, Shepherd's Gate, has paid a total of \$12,375 to process the application. These fees fully cover staff's time spent processing the application.

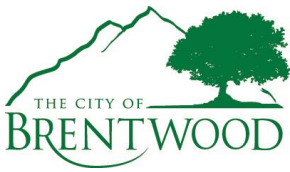
BACKGROUND

Shepherd's Gate is a 501(c)(3) public charity that offers a temporary residential program for women and children who are battling homelessness, addiction, and domestic violence. Their 12-16 month program is unique in its combination of residential uses and services, which include assistance combatting substance abuse, financial and legal matters, family reunification, education, and parenting. Housing and all services are offered free of charge to participants, who take part in the facility's "Christ-centered recovery program." Shepherd's Gate has operated its existing facility at this location since 2006, and is now requesting approval of three separate entitlements that, if approved, would culminate in an increase of the number of residents that the program can accommodate and the construction of three new attached dwelling units with associated site improvements.

Specifically, the applicant is requesting approval of a Zoning Text Amendment (RZ 23-001) that proposes to amend BMC subsection 17.495.005(F), "Other Regulations", to allow an increase, through the approval of a Conditional Use Permit, to the number of temporary residents Shepherd's Gate can accommodate.

In addition, the applicant is requesting approval of a Conditional Use Permit (CUP 23-001) to accommodate 15 additional residents, bringing the total number of residents to a maximum of 33. This approval would be contingent on approval of the zoning text amendment detailed above.

Lastly, the applicant is requesting approval of a Design Review (DR 23-001) that would facilitate improvements to the existing facility involving a 2,877 square foot addition. The addition would consist of three attached dwelling units (cottages), a communal pantry, and communal laundry room. Associated site improvements would include the reconfiguration of the parking area and the addition of three



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parking spaces, a new walkway, additional landscaping, and a new solid waste enclosure.

A detailed analysis of the project is included as part of the November 7, 2023, Planning Commission staff report, which is attached for the City Council's review and reference.

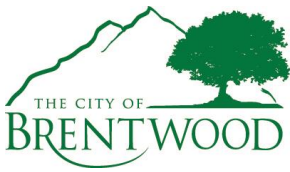
Planning Commission Meeting of November 7, 2023

On November 7, 2023, the Planning Commission held a public hearing to consider the project. At least 10 days prior to the public hearing, the project applicant erected a sign along the Sycamore Avenue frontage advertising the upcoming public hearing. Staff also published a notice of public hearing for the project in the Brentwood Press and mailed it to all property owners within 300 feet of the site, as required by law. The City did not receive any public comments regarding this project prior to the Planning Commission hearing.

After staff's presentation of the project, the Commission opened the hearing and took testimony from the applicant, represented by Carol Patterson, CEO of Shepherd's Gate. Ms. Patterson explained that the request to accommodate more than 18 residents is due to the consistent need of housing for individuals and families who graduate from the Shepherd's Gate program but have no safe place to go. The three new cottage units would house up to three families and would allow program alumni to have a safe place to live for six to nine months while they secure permanent housing. The cottages are rent free and the criteria for obtaining one is that the program graduate must be working or going to school.

During the remainder of the public hearing, there were eight people who submitted comment cards and two who spoke at the podium to express support for the project. There were also two comments provided through Zoom, one in support and one opposed, with concerns regarding the operational characteristics and the use itself being allowed in the PD-45 zoning district.

After closing the public hearing, the Planning Commission clarified that the use itself is compatible with the zoning since it is a permitted use within the PD-45 zoning district. The Commission noted that approval of the three proposed units would not conflict with the PD-45 zoning district since that zoning district (as noted in BMC [Section 17.495.003](#)) allows, through a conditional use permit, those conditionally permitted uses under the R-1 zone ([Section 17.130.003](#)). The list of conditionally permitted uses in the R-1 zone include multi-family style housing, consisting of subdivisions having patio houses, row houses, apartments and similar housing



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developments provided that (1) the entire parcel or group of parcels is master planned and (2) any increases in density are offset by lessor density or greater lot sizes within the development. The proposed project, if the CUP were to be approved by the Council, would be in compliance with the referenced section of the BMC since it is part of a master plan (PD-45) and is located on a 1.5-acre parcel, which would amount to a density of 2.66 dwelling units per acre (4 units / 1.5-acres).

During deliberation, the Commission questioned the proposed amended language for the PD-45 zoning text (existing text to be deleted shown in strikethrough format and new text to be added shown in underline format):

A residential group home for ~~women and children~~ individuals who are in need of housing and related services shall be provided on parcel "C" of TSM 8534. The home shall accommodate and be a full-time residence ~~for up to eighteen women and children.~~ with a size and occupancy to be approved through a Conditional Use Permit, if more than 18 individuals. The home shall include ~~approximately nine~~ residential bedrooms/units, staff offices and overnight accommodations, counseling rooms, and family areas. ~~The home shall be operated primarily as a battered women's shelter and is operated for the benefit of Brentwood residents and their children.~~

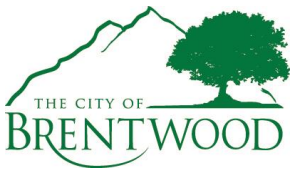
The reason for the Commission's concern was amending the zoning text by removing "women and children" and replacing it with "individuals" and any unintended consequences to the surrounding community that may occur. The Planning Commission's specific questions and the responses provided at the meeting are listed below:

1. Would Shepherd's Gate allow residents other than women and children?

During the public hearing, the applicant clarified that the applicant does not intend to allow residents other than women and children. Shepherd's Gate's long standing mission statement is to serve only those two groups. As discussed below, the proposed conditional use permit includes a condition requiring substantial conformance to this project description.

2. Who is requesting that the text be modified to remove women and children – the City or the applicant?

During the public hearing, there were questions raised as to who initiated the proposed amendment to the zoning text. Typically, when a zoning text amendment is submitted, it is the applicant who proposes the amended



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language. In this case, after reviewing the application that was submitted to develop the three new cottage units, staff determined that a zoning text amendment would be needed to accommodate them. As a result, the applicant submitted proposed language to include in the text amendment, which was then modified slightly by staff to ensure that it was in compliance with state law and was not exclusionary as to gender.

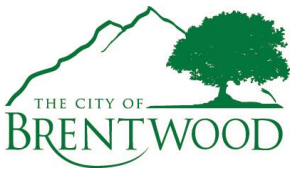
Staff clarified that under a variety of housing laws, including the Fair Employment and Housing Act (FEHA), the City is not in a position to codify language that would discriminate on basis of sex or gender. For example, that portion of FEHA found at [Government Code Section 12955\(I\)](#) provides, in pertinent part:

It shall be unlawful ... to discriminate through public or private land use practices, decisions, and authorizations because of ... sex [or] gender... Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law ... that make housing opportunities available.

It is important to clarify that the addition of inclusionary language as part of the zoning text amendment does not mean that Shepherd's Gate has to change its mission statement or serve others that are not women or children; and Shepherd's Gate has not expressed an interest in doing so. As a private entity, it can choose to continue serving only women and children, and in fact, the project description only seeks an increase to the number of women and children that the home can serve.

As recommended by the Planning Commission, the project is conditioned (Condition of Approval #3 of the CUP resolution) in a manner such that Shepherd's Gate (or any other entity) must operate in substantial conformance with the proposed project description. The proposed project description stipulates that this request, and therefore any approval, will be for an increase specifically in the number of women and children that can reside on the site. Whether or not such a condition would ultimately be enforceable, given the anti-discrimination laws noted above, is subject to question, but represents a best effort to require the applicant adhere to its proposed project description.

3. What would happen if another entity bought the property or if Shepherd's Gate's mission statement changes over time to serve other than women and



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children (i.e. would Shepherd's Gate be able to house residents other than women and children)?

Conditionally permitted uses are tied to the land and are not limited to the property owner who initiated the use. There is no lawful way to condition the project such that an approved CUP would expire upon transfer of the land to a new property owner. (See, for example, [Anza Parking Corp. v. City of Burlingame \(1987\) 195 Cal.App.3d 855, 860](#), where the California Court of Appeal held that "... a conditional use permit may not lawfully (and perhaps may not constitutionally...) be conditioned upon the permittee having no right to transfer it with the land. Such a condition, if imposed, is beyond the power of the zoning authority, and void.") However, if there is a violation of any of the conditions set forth by the approval of a conditional use permit, then the City can review the conditional use permit and take action on it.

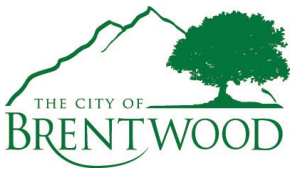
With this in mind, the Planning Commission, in the interest of ensuring continued compatibility with the established neighborhood, further recommended that the project be conditioned as follows:

#11. In the event the Permittee desires to substantially change the project description, dated 'Received January 12, 2023,' or transfer title of the property to another individual or entity, Permittee shall provide 30 days' prior written notice to the Director of Community Development.

This condition would give the City the ability to preemptively review any changes to the operational characteristics of the project and seek to ensure that the project remains in substantial compliance with all aspects of the subject conditional use permit.

4. What regulatory mechanisms would be at the City's disposal in order to preserve the current and proposed operational characteristics?

By their nature, all conditional use permits are "conditional" and the permittee's failure to comply with the conditions may lead to revocation or modification of the permit, following a noticed public hearing. Under state law, the City has the ability to impose additional or amended conditions on a conditional use permit if the operation of the business is determined to be detrimental to the public health, safety, or welfare. (See [Garavatti v. Fairfax Planning Commission \(1971\) 22 Cal.App.3d 145, 151](#).) If it appeared that the permittee was not abiding by the conditions of approval imposed through this



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use permit, or if the operation of the facility was detrimental to the public health, safety, or welfare, the permit could be called for consideration of modification or revocation.

With an eye to ensuring the Shepherd's Gate project is operated as represented by the applicant, staff and the Planning Commission included a number of conditions of approval and carefully considered the proposed zoning language. In addition to condition #11 noted above, the Commission modified the language of the proposed zoning text amendment to provide as follows (changes in italics):

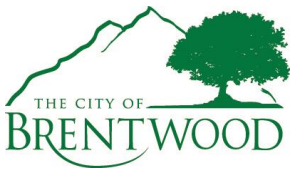
17.495.004 (J). Maximum number of dwelling units: One hundred eighty-one, plus a residential group home for up to eighteen women and children *as a permitted use, with the potential for additional residents in said group home upon approval of a conditional use permit.* (Ord. 961 § 2, 2016; Ord. 857 § 2, 2008)

17.495.005 (F). A residential group home for ~~women and children~~ *individuals persons* who are in need of housing and related services shall be provided on parcel "C" of TSM 8534. The home shall accommodate and be a full-time residence ~~for up to eighteen women and children.~~ *with a size and occupancy to be approved through a Conditional Use Permit, if more than 18 individuals persons.* The home shall include ~~approximately nine~~ *residential bedrooms/units*, staff offices and overnight accommodations, counseling rooms, and family areas. ~~The home shall be operated primarily as a battered women's shelter and is operated for the benefit of Brentwood residents and their children.~~ (Ord. 857 § 2, 2008)

After deliberation, the Commission unanimously adopted (4-0, Commissioner Brand absent) Resolution No. 23-035 (as modified) to recommend that the City Council approve RZ 23-001. The Commission then unanimously adopted (4-0, Commissioner Brand absent) Resolution No. 23-036 (as conditioned) recommending that the City Council approve CUP 23-001. Finally, the Commission unanimously adopted (4-0, Commissioner Brand absent) Resolution No. 23-037, recommending that the Council approve DR 23-001.

CITY COUNCIL STRATEGIC INITIATIVE

Not applicable.



PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.

DATE OF NOTICE

The City of Brentwood published a public hearing notice in the Brentwood Press and mailed it to all property owners within 300 feet of the site on December 29, 2023. The applicant also posted the project site with the required signage.

ENVIRONMENTAL DETERMINATION

The proposed project qualifies as a Class 1 categorical exemption under the California Environmental Quality Act (CEQA) Guidelines Section 15301(e)(2), as it will be an addition to an existing facility in which the 2,877 square foot addition will not result in an increase of more than 50 percent of the floor area of the 7,421 square foot existing structure.

The proposed project is further exempt from CEQA as it qualifies as a Class 3 categorical exemption under Guidelines Section 15303(b), as the project consists of the construction of a small multi-family residential structure totaling no more than six dwelling units within an urbanized area.

ATTACHMENT(S)

1. Previous Action
2. CC Ordinance for RZ 23-001
3. CC Resolution for CUP 23-001
4. CC Resolution for DR 23-001
5. Planning Commission Staff Report
6. Shepherd's Gate Project Description
7. Shepherd's Gate, Full Plan Set